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Executive Summary

Professional Regulation

A Staff Study of Accountancy,
Architecture, Engineering and Law
in Ontario prepared for
The Professional Organizations
Committee

Michael J. Trebilcock
Carolyn J. Tuohy
Alan D. Wolfson

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The Staff Study was commissioned by
The Professional Organizations Committee, but
views expressed herein are those of the authors alone.

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Committee**

**Michael J. Trebilcock
Carolyn J. Tuohy
Alan D. Wolfson**

January, 1979

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Explanatory Note

Attached please find the Executive Summary of *Professional Regulation; A Staff Study of Accountancy, Architecture, Engineering and Law in Ontario prepared for the Professional Organizations Committee*. This Executive Summary is composed of several sections of the larger Study, namely:

- i) Preface by the Professional Organizations Committee;
- ii) Table of Contents of the Staff Study;
- iii) "An Overview" (Chapter 1 of the Staff Study)
- iv) "Summary of Proposals" (Chapter 14 of the Staff Study)

The Proposals contained in Chapter 14 are numbered to reflect the chapters in the Study from which they emanate. Thus, for example, Proposal 5.1 is discussed more fully, and is summarized similarly in Chapter 5, "The Scope of Licensed Practice".

Copies of *Professional Regulation* are available from the Ontario Government Bookstore at 880 Bay Street in Toronto. Copies can be ordered by sending a \$6.00 cheque or money order, made payable to the Treasurer of Ontario, to: Publications Centre, 880 Bay Street, 5th floor, Toronto, Ontario, M7A 1N8 (Tel: 416-965-6015). Please quote "ISBN 0-7743-3393-6". Copies of the Study have also been sent to all depository public libraries in Ontario. Please contact the Publications Centre for details about the availability of the Committee's background working papers, referred to in the Preface which follows.



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Preface

By letter of April 6, 1976 to the Ontario Law Reform Commission, the Attorney General of Ontario requested a review of statutes governing the professions of Architecture, Engineering, Public Accountancy, and Law "with a view to making recommendations to the Government for comprehensive legislation setting the legal framework within which these professions are to operate." The reference asked for a review of the following statutes:

1. *The Architects Act*
2. *The Law Society Act*
3. *The Notaries Act*
4. *The Professional Engineers Act*
5. *The Public Accountancy Act*

and in particular the following issues:

- (1) the appropriateness of the existing division of functions and jurisdiction of these professional groups; for instance, the appropriateness of the dividing line between architecture and engineering in the design of buildings;
- (2) the possible creation of new professional groups and sub-groups or the amalgamation of groups within these professions; for instance, the possible abolition of the existing division between chartered accountants and accredited public accountants;
- (3) the need for recognition and definition of the roles of paraprofessionals, such as law clerks and engineering technologists, and the appropriateness of the possible creation of new governing bodies for these groups;
- (4) the amount of control these professional groups should have over the training and certification of their members;
- (5) the appropriateness of permitting members of these professions to incorporate their practices;
- (6) any incidental questions raised by the foregoing issues.

On November 1, 1976, the Attorney General supplemented these terms of reference with the request to review:

...the appropriateness of the requirement of Canadian citizenship or British subject status as a condition of membership in a professional body.

In May, 1977, these terms of reference were transferred from the Ontario Law Reform Commission to a ministerial committee to be known as the Professional Organizations Committee. The research and consultation efforts begun under the Law Reform Commission were continued in their entirety under the Professional Organizations Committee.

In June, 1976, interested groups and individuals were contacted by letters and by public advertisements outlining the Committee's terms of reference and requesting preliminary briefs which would help define the particular issues to be investigated. A list of associations and individuals presenting preliminary briefs is appended to the Staff Study.

On the basis of the terms of reference, the preliminary briefs, and staff research, a list of issues was drawn up; these issues are identified in Chapter 1 of the Staff Study. The investigation of the issues was undertaken by soliciting two essentially independent streams of argument and analysis. On the one hand, an outline of the issues was published in a brochure which invited interested parties to submit intermediate briefs addressing these or other relevant matters. A list of those presenting intermediate briefs is appended to the Staff Study. On the other hand, researchers with expertise in matters of professional regulation were commissioned to address the issues as research topics in a series of working papers (released herewith). A list of working papers is appended to the Staff Study.

To support the Committee's research programme, a number of surveys were undertaken. Mailed questionnaires were sent to all architectural, engineering, public accounting and legal firms in the province. These questionnaires, which were completed on an anonymous basis, requested detailed information regarding manpower, services, and clients; completing them was a complex and time-consuming task for many firms. Nonetheless, a most impressive rate of response in all four professions was received: 69% in each of architecture and engineering; 67% in public accounting; and 52% in law. In addition to the mailed questionnaire survey of firms, face-to-face interviews were conducted with professionals and

paraprofessionals in a representative sample of firms (approximately 25 in each profession). Finally, sample surveys of clients of professionals were undertaken. Interviews were conducted either face-to-face or by telephone with a sample of 85 clients of public accountants, drawn randomly from a Dun & Bradstreet sample and stratified to represent small, medium and large firms. In addition, interviews were conducted with users of financial information, such as chartered bankers, security analysts and federal government authorities. With regard to clients of lawyers, a sample of business firms drawn from a Dun & Bradstreet sample and stratified to represent large, medium and small businesses were interviewed by telephone; and a sample of individuals, randomly selected from the records of Land Registry Offices and County and Supreme Courts, was surveyed by mail. The response rate to these surveys was, from the business sector, 64.4% and from the individual sector, 30.4%. Because of the difficulties of identifying enough recent clients of architects and engineers to draw a random sample, the sample of clients in these professions was more informally selected and smaller in size (at about 50). Architecture and engineering clients were interviewed by telephone and face-to-face.

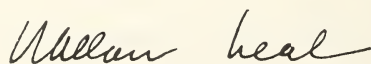
Despite the formal separation of the two lines of inquiry--working papers and briefs from interested parties--there were a number of informal links between them. The staffs and the elected members of professional organizations were most accommodating to numerous requests by commissioned and in-house researchers for specific information related to their research. On a slightly more formal level, professional and paraprofessional organizations, and consumer groups, at the Committee's request, struck liaison committees to discuss with it ongoing research activities. The first round of meetings with these liaison groups, held after the receipt of preliminary briefs, centred upon the definition of the research agenda, and the clarification of issues raised in preliminary in-house research. A second round was held after the completion of commissioned working papers to receive comments on those papers.

Throughout the process of investigation, the Committee has been struck by the dedication and diligence of the representatives of the professional, paraprofessional and consumer groups with whom it has dealt. Numerous written submissions have been received. The request for preliminary briefs outlining issues resulted in 93 responses: 29 from professional and paraprofessional associations, and 64 from other interested parties. Over 2,000 organizations and individuals have responded to the brochure, requesting that they be placed on our mailing list and kept

aware of the Committee's activities. Eighty-four interim briefs were received: 21 from professional and paraprofessional associations, 63 from other interested parties. The Committee's discussions with representatives on liaison committees have often been, in the language of diplomacy, "full and frank". Issues such as those with which this Committee is charged, which touch so directly on the livelihood of individuals, do not admit of an easy consensus. Nonetheless, all of the affected groups have shown themselves willing to engage in a full ventilation and discussion of these issues in an effort to resolve them.

The various activities of the Committee have produced a great deal of detailed, and sometimes controversial, material. The professions under study are inherently complex, and their activities vital to the economic and social life of this province. They do not lend themselves to easy judgements on issues bearing on their regulation. Accordingly, the Committee has decided that, at this stage in its inquiry, the interests of intelligent public discussion and debate would be furthered by asking its Research Directorate to prepare and release a Staff Study which sets out the issues under study, identifies the problems which each issue poses, and offers some preliminary thoughts on possible resolution. The Committee is pleased to release this Staff Study at this time.

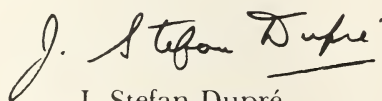
In so doing, the Committee wishes to emphasize that the views expressed in the Staff Study are those of the Research Directorate alone. The Committee has given members of the Research Directorate a completely free hand in analyzing issues as they see fit, and has no position of its own on any of these issues. The purpose of the Staff Study is to focus discussion and to sharpen debate. The Committee hopes that the written briefs submitted by way of reaction, and the oral presentations that will be made at a series of public meetings to be held in the spring and early summer of 1979, will assist it in coming to reasoned and responsible views on some of Ontario's most important professions.



H. Allan Leal, Q.C.,
Chairman



J. Alex Corry,
Committee Member



J. Stefan Dupré,
Committee Member

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An Overview

A. The Context

In Ontario, as in most other Anglo-American jurisdictions, the last decade has been a period of considerable turbulence for the professions. The growth of the consumer movement, the increase in the scale of government activity, and jurisdictional disputes between and among professional and paraprofessional groups themselves have led to increasing public scrutiny of the professions, and in many cases to legislative change. In this province, the health professions have experienced a process of review and change beginning with the Committee on the Healing Arts in the late 1960's¹ and culminating in *The Health Disciplines Act* in 1974.² In Quebec, sweeping legislative change has occurred in the form of a *Professional Code*³ governing all self-regulatory professional bodies in the province, and the establishment of an overseeing body, the Office of the Professions. In Alberta, a legislative committee has published two reports on the professions⁴ and the government has recently released a policy paper.⁵ In British Columbia, the government has announced that it is considering a study of the self-governing professions. At the federal level in Canada, amendments to the *Combines Investigation Act*,⁶ intended to remove barriers to competition within the professions, have resulted in major changes in the policies of professional bodies towards such issues as fee determination and advertising. In the United States, at the federal level, the Federal Trade Commission and the Justice Department have pursued a similar pro-competition policy toward the professions, and the Supreme Court has ruled against professional fee schedules and advertising prohibitions.⁷ Both Houses in the United States Congress have undertaken investigations of the accounting profession in the United States;⁸ and several state legislatures, notably California, have enacted legislation⁹ drastically restructuring professional regulatory bodies. In the United

¹Government of Ontario, Committee on the Healing Arts, *Report* (Ontario: Queen's Printer, 1970).

²S.O. 1974, c. 47.

³S.Q. 1973, c. 43.

⁴Government of Alberta, Special Committee of the Legislative Assembly of Alberta on Professions and Occupations, *Report I*, April, 1973 and *Report II*, December, 1973 (Alberta: Queen's Printer, 1973).

⁵Government of Alberta, *Policy Governing Future Legislation for the Professions and Occupations* (Alberta: Queen's Printer, 1978).

⁶S.C. 1974-75-76, c. 76.

⁷See Chapter 10 of the Staff Study.

⁸United States Congress, Senate Committee on Governmental Affairs, Subcommittee on Reports, Accounting and Management, *Improving the Accountability of Publicly-Owned Corporations and their Auditors* (Washington, D.C.: Government Printing Office, 1977); United States Congress, House of Representatives Committee on Interstate and Foreign Commerce, Subcommittee on Oversight and Investigations, *Report on Federal Regulation and Regulatory Reform* (the Moss Report) (Washington, D.C.: Government Printing Office, 1976).

⁹The California *Business and Professions Code*, amended by Senate Bills No. 2116 and 1839, approved by the governor and filed with the secretary of state, September 22, 1976.

Kingdom, Royal Commissions are currently investigating the professions of law and engineering. In Australia, state inquiries into the professions of law and accounting are in progress.

While undergoing such extensive external review, the professions themselves have engaged in intensive self-scrutiny. Thousands of professional man-hours have been spent in preparing briefs for commissions and committees of inquiry, and in independently developing and revising professional policies. In Ontario in recent years, for example, professional associations have taken several initiatives in undertaking studies and group discussions on issues such as professional competence, specialization, advertising, social responsibility and public accountability.

In this general environment, the Professional Organizations Committee was asked to review the legislation governing accountants, architects, engineers, lawyers, and notaries in Ontario. (For those unfamiliar with these professions, a brief description is contained in the Addendum to this chapter.)

As part of this review, the Committee asked us, as its Research Directorate, to prepare a Staff Study. The purpose of the Study is to analyze and synthesize material relating to a number of key issues in the regulation of the professions. The issues themselves were identified by an analysis of the terms of reference and their implications, as well as by suggestions contained in the preliminary briefs solicited by the Committee. The preparation of our Study was greatly assisted by the material presented in intermediate briefs and in the working papers commissioned by the Committee. It should be emphasized, however, that the views expressed throughout this Study are our *own* views, relating to issues which we deemed to be central to the regulatory questions at hand.

B. The Issues

The terms of reference of the Committee require an evaluation of some very fundamental matters pertaining to the appropriate regulatory framework for each of the four professions under study. These issues involve an analysis of two related questions: whether regulatory intervention in a particular professional market is justified; and, if it is, what form that intervention should take. Both questions raise substantial difficulties because in the real world both unregulated professional markets and the available forms of regulatory intervention all, to some extent, exhibit imperfections. Thus, policy-makers face challenging choices between one imperfect state of the world and another.

In public accountancy, the existing regulatory framework (an exclusive licensure regime administered by a body--The Public Accountants Council--which is intended to represent all affected professional interests) is under challenge principally by the Certified General Accountants who are questioning whether the field of public accountancy, at least as currently defined, should be exclusively assigned to members of the Institute of Chartered Accountants of Ontario.

In architecture and engineering, existing regulatory frameworks (self-regulating, exclusive licensure regimes) are under challenge in two respects. First, engineers and architects are in conflict over the question of whether engineers should be entitled to design certain kinds of buildings which architects believe should properly fall within the exclusive preserve of their profession. Second, in addition to this "horizontal" demarcation problem, "vertical" demarcation problems have arisen in both professions with respect to the determination of the appropriate roles and regulatory frameworks for engineering technologists and technicians and architectural technologists respectively.

In law, the principal questions surrounding the existing regulatory framework (a self-regulating, exclusive licensure regime) have been prompted by submissions by paraprofessional groups, such as law clerks and community legal workers, seeking expanded recognition and prerogatives. Ancillary questions have arisen as to the scope of the licensed functions currently exclusively assigned to lawyers, and as to the appropriate division of functions between lawyers and other allied professions and occupations who, now or in the future, might desire to perform functions in these fields.

If regulatory intervention is justified, and the nature and scope of the appropriate regulatory instrument has been determined, the question which then arises is, "Who should administer that regulatory regime?" Here a choice between direct and delegated regulation must be made and in either case a range of issues pertaining to the public accountability of the regulatory body must be addressed.

Another set of issues common to entry regulation in all four professions is raised by the question of Canadian citizenship as a requirement of membership of a profession or participation in its governance, and by the question of appropriate transfer rules to govern the entry of in-migrating professionals.

In Part II of our Study, we develop a general approach to these regulatory framework issues, and in Part III, apply that approach in a specific way to each of the four professions under study. After these regulatory framework issues have been resolved, a number of questions pertaining to the regulation of post-entry conduct of professionals are examined in Part IV.

One issue is whether, in any of the four professions, a case exists for a formal specialty certification or accreditation system, superimposed on whatever form of general regulation has been chosen, to enable a better matching of clients with special problems and professionals with special expertise. Alternative responses to information deficiencies in these professional markets, such as more relaxed rules on professional advertising, must also be considered in this context.

The question of fee determination also raises a series of issues. These include the extent to which market forces can be relied on to determine professional fees; the role of minimum, maximum, fixed or suggested fee schedules; and the advantages and disadvantages of relaxed rules on price advertising.

A further set of issues is raised by the post-entry regulation of competence. In particular, the appropriate roles of civil liability suits for professional negligence, disciplinary sanctions for incompetence, and mandatory continuing education or re-examination programmes, all call for careful review.

With respect to firm structure, the Committee's terms of reference call for an examination of whether or not professional firms should be permitted to incorporate. This matter raises some difficult questions relating to beneficial ownership requirements for shareholdings in such corporations, and questions of equity raised by the tax treatment of professional corporations contrasted with that accorded to unincorporated professional firms. Related issues are raised by the concept of the multidisciplinary firm offering mixed forms of professional services.

The increasing proportion of employed (as opposed to self-employed) members of the professions raises some special issues, such as the adequacy of the representation of their interests on governing bodies of the professions; the relationships among governing bodies, employed professionals, and employers over matters such as the employer's legal

ability to determine what qualifications he requires in his employees to perform given functions; conflicts between professional standards and management authority; whether employee professionals should be permitted to unionize and the principles that should apply to the determination of appropriate bargaining units in the event that they are.

While outlining those issues which the Study addresses, it is also appropriate to indicate those issues which we have not addressed. First, we have not specifically considered direct or indirect public subsidies as mechanisms to promote public access to professional services. These issues are especially significant in the legal profession. They have been the subject of a recent inquiry in Ontario¹⁰ and we have not attempted to re-till this ground. Similarly, we have not addressed the role of public subsidization or quota policies as they affect rights of access to professional education and subsequent professional careers. Second, we have not addressed in any direct or detailed way the educational systems presently in place in each of the four professions. In some cases, these have been the subject of recent inquiry by other bodies, but in any event, we have not felt equipped, in terms of time, expertise, or resources, to engage in a full-scale review of the merits of existing educational programmes. Similarly, we have not embarked upon any serious analysis of manpower planning or forecasting in any of the four professions. We have been mindful of the fact that the Committee's appointment was prompted by a number of rather specific and pressing concerns facing the government in these professions and that priorities, both in terms of resources and time, needed to be established accordingly.

C. General Points of Emphasis

It is appropriate that we should state at the outset certain general emphases that our proposals reflect.

First, in three of the four professions under study--accounting, architecture, and engineering--the principal regulatory problem revolves around the protection of third party interests, not second party (client) interests as is the case in the prototypical professions of medicine and law. This poses special challenges in designing regulatory strategies that will ensure not only that professional services purchased are of an appropriate quality, but also that an appropriate quantity of services is purchased to

¹⁰Government of Ontario, Ministry of the Attorney General, *Report of the Task Force on Legal Aid* (the Osler Report), Part I (Ontario: Queen's Printer, 1974).

protect these third party interests. In other words, parallel regulation of the demand for and supply of professional services is required. This issue has been little addressed in previous analyses of the professions.

Second, the Study generally accepts that once a case has been made for regulation of these professional markets, appropriately tempered forms of self-regulation are to be preferred to direct state regulation. We see this endorsement of the concept of self-regulation as essential to the protection and promotion of trust relationships between professionals and their clients. Without their clients' trust, professionals could not perform their unique functions. The trust inherent in the delegation of regulatory authority from the state to a self-governing profession reinforces the confidence required at the level of individual practitioner-client relationships.

Third, while recognizing the central role of self-regulation in the regulation of professional markets, we are nevertheless compelled also to recognize that self-regulation is still regulation, self-government is still government, and that it is as possible to have too much regulation or government as it is to have too little. In the course of this Study, we identify some areas of professional activity where more stringent regulation seems called for; for example, post-entry regulation of professional competence. On the other hand, we also identify a number of areas of existing regulation where a lightening of the regulatory presence seems called for. Some existing forms of exclusive licensure seem to us overly expansive and conducive to excessive restrictions on entry and undue rigidities in manpower markets. As well, existing forms of regulation of post-entry activity, for example, advertising and the formation of multidisciplinary firms, seem to us to be excessive. The net effect of all of our proposals would be to reduce the existing level of regulation in the professions, not increase it.

In particular, we note that restriction on the rights to practise through licensure represents only one possible regulatory response among several. Indeed it is the most extreme response and is thus justified only by the most compelling circumstances. Our inclination has been to limit the scope of licences as much as possible, consistent with the need to protect vulnerable clients and third parties. Where licensure is not required, we have considered the advisability of establishing certification regimes with a statutory base, but, again, only as required in the circumstances.

Fourth, where licensing and certification regimes are really needed, they must be treated as serious governing instruments. In the limited circumstances in which licensing and certification powers need to be exercised, we have thus paid considerable attention to the structures and processes through which they are exercised. In particular, we have emphasized the importance of public accountability.

Fifth, throughout our Study we emphasize both explicitly and implicitly the importance of innovation in professional markets and the correlative importance of eliminating unjustified regulatory constraints on the ability of individual professionals and professional firms to exploit their innovative abilities to the fullest in improving existing professional delivery systems. A relaxation of existing restrictions on advertising and multidisciplinary firms are, again, important examples of this emphasis. The four professions under study comprise an important resource of creative and talented people. Given the commitment to both integrity and excellence in professional dealings that we have observed in the course of this Study, it would be incongruous for either the governing bodies of these professions or any other agency to promote regulatory policies that unduly crimp or constrain those talents. For this reason, we have placed less emphasis than has been customary on analyzing appropriate entry qualifications within licensed functions, where debate tends to be indeterminate, and more emphasis than has been customary on evaluating conduct regulation.

Finally, we should state unequivocally at this point that this Study is premised on the view, strongly supported by the research undertaken for the Committee, that the four professions under study are all in good health and that radical changes are not called for. Our proposals are attempts to identify those margins of adaptation and adjustment where excellence, in all its dimensions, can be even more fully attained.

Summary of Proposals

Chapter 5 The Scope of Licensed Practice

- 5.1 The licensed function in accounting should be limited to the performance of statutory audits, except those audits performed in respect of the entities (essentially public sector organizations and lending institutions) described in section 1(c)(iii-vi) of the present *Public Accountancy Act*.
- 5.2 The Institute of Chartered Accountants of Ontario should become the licensing body in accounting.
- 5.3 Current non-C.A. licensees in public accounting ought to be subsumed into membership in the Institute of Chartered Accountants.
- 5.4 Rules respecting disclosure of non-audit services provided by auditors to corporations under review should be developed (preferably by the Institute), and in some cases these activities might be proscribed.
- 5.5 Third party interests in building design and construction are important enough to warrant licensure, though not in the case of buildings exempted from coverage by section 2.1 of the Ontario Building Code. Accordingly, all such small private buildings should be excluded from the scope of the licences in building design.
- 5.6 The licensed function should be restricted to Registered Architects and to a new group of “Licensed Building Engineers” of the Association of Professional Engineers of Ontario. *The Architects Act* should be amended to *remove* the exemption for other Professional Engineers allowing them to provide architectural services in the course of their engineering work.
- 5.7 The Board of Licensed Building Engineers should include Registered Architects and lay members, as well as Professional Engineers (both Licensed Building Engineers and other Professional Engineers).
- 5.8 Licensed Building Engineers should be designated by the Association of Professional Engineers of Ontario and only they,

among professional engineers, should be licensed to provide building design services.

- 5.9 Except for engineering services specifically required by statute or regulation, all engineering work done by employees of industrial, commercial or government enterprises (not professional firms), should be exempt from the scope of the licence to practise professional engineering.
- 5.10 Primarily because of information problems faced by consumers (second parties) and to a lesser extent because of possible third party effects, an exclusive rights to practise (licensure) regime should be maintained in law.
- 5.11 As at present, there should be no attempt by statute to define precisely the functions falling within the practice of law regulated under this licensure regime.
- 5.12 The exclusive right to practise in household legal service sectors, such as residential conveyancing, presently possessed by members of the Law Society of Upper Canada, should not be abrogated. However, this proposal is conditional on: the removal of present restrictions on price and non-price advertising; the availability of minority equity participation to paraprofessionals in incorporated law firms; the avoidance of restrictive rules governing the ratios of professional and paraprofessional personnel; and the avoidance of rules restricting the formation of multi-branch law firms.
- 5.13 The present system of direct regulation of non-lawyer notaries, involving a provincial examiner in the Ministry of the Attorney General and county court judges, should be replaced by a single Registrar (as under various statutes administered by the Ministry of Consumer and Commercial Relations), with appeals to the Commercial Registration Appeal Tribunal on matters pertaining to the issue or revocation of licences or commissions.
- 5.14 The “public convenience and necessity” test for the issue of new notarial commissions to non-lawyers should be replaced by clearly specified qualifying standards and by the introduction of evaluation techniques amenable to reasonably objective application.

- 5.15 Grounds for disciplining non-lawyer notaries for misconduct or incompetence should be clearly specified and a disciplinary process should be fully developed.
- 5.16 Restrictions on notarial commissions (territorial or class of document) should be more clearly specified either in *The Notaries Act* or in the terms of particular commissions.
- 5.17 Non-lawyer notaries should continue to be regulated directly by the government and not be given self-governing status.
- 5.18 Unauthorized practice prosecutions should not ordinarily be initiated and conducted by professional organizations, but instead should fall under the responsibilities of the Director in the Ministry of Consumer and Commercial Relations who administers *The Business Practices Act*, with unauthorized practice being deemed an “unfair practice” under this *Act*. Under this proposal, unauthorized practice complaints would typically be brought before the Commercial Registration Appeal Tribunal by the Director (alone) in applications for injunctive relief.

Chapter 6 Related Areas of Practice

- 6.1 It should be declared an “unfair practice” under *The Business Practices Act* for any person to hold himself out as “certified”, “professional”, “registered”, “chartered”, “accredited” or like terms implying state recognition or endorsement of special membership credentials in any generically described profession or occupation unless use of any such designation is validly authorized by or under statute. This would mean that, in future, conferment of professional designations (other than signification of simple membership in a professional association) would require enactment of an appropriate professional statute specifying the powers, structures, and processes of the body awarding such designations. Alternative mechanisms of establishing such designations (such as the registration of a trade mark) would then become subject to challenge by the Director administering *The Business Practices Act*, who could initiate a determination of the validity of such mechanisms by enforcement action under the *Act*.

- 6.2 The designation “Certified General Accountant” ought to be established in a statute setting out the powers, structures, and processes of the Certified General Accountants Association of Ontario. The designations “Chartered Accountant” and “Registered Industrial Accountant” ought to continue to be based in statutes establishing the Institute of Chartered Accountants of Ontario and the Society of Management Accountants of Ontario respectively. Each of these statutes should accord with the criteria laid out and discussed in Chapter 7.
- 6.3 The designation “Accredited Public Accountant” should not be established by statute, and its continued use would, under proposal 6.1, become a violation of the Ontario *Business Practices Act*.
- 6.4 No designation involving the use of the terms “certified”, “registered”, “accredited”, “chartered”, or “professional” other than those established in the licensing statutes proposed in Chapter 5 or in the certification statutes proposed in 6.2 above, should be established in the professions under review.
- 6.5 No regulation of commercial tax return preparers is required (although this is an area in which further submissions to the Committee might be useful).
- 6.6 No licensing or statutory certification system is required for paraprofessionals (that is, personnel functioning under the supervision and responsibility of a professional) in any of the professions under review.
- 6.7 “Bridging” provisions whereby paraprofessionals and persons in allied occupations can take further training to qualify as professionals appear to be basically fair in accounting and engineering, excessively onerous in architecture, and non-existent in law. In each profession, bridging provisions ought to exist, and ought to allow for a trading-off of experience against formal academic qualifications, as long as no one is thereby allowed to “short-cut” the normal academic route. Furthermore, paraprofessionals and/or allied occupations ought to be formally represented on the bodies establishing bridging provisions, a condition which does not currently obtain in any of the professions [see also proposal 7.3(i) regarding the representation of such groups on the governing councils of professional bodies].

- 6.8 Engineering and architectural technologists and technicians ought not to be licensed to practise “in parallel with” and/or independently of engineers and architects. However, in engineering, the industrial exemption will have the effect of allowing partial parallel practice in industry and government.
- 6.9 Community legal workers ought to be granted an exemption from the licensing system in law, as employees of such community legal programmes, financed by public funds, as might be specified from time to time by or under *The Law Society Act*.
- 6.10 As implied in proposals 6.4 to 6.9, there is no need to grant any statutory powers to the Ontario Association of Certified Engineering Technicians and Technologists, the Association of Architectural Technologists of Ontario, the Institute of Law Clerks of Ontario, the Metropolitan Toronto Legal Secretaries Association, or to any other group, association, or agency in respect of the regulation of the professional areas under review, except as proposed in Chapter 5 and in proposal 6.2 above.

Chapter 7 The Structures and Processes of Professional Self-Regulation

- 7.1 The structures and processes of professional self-government should be as clear and comprehensible as possible to those affected by their decisions: Accordingly, the statutes establishing licensing and certifying bodies in law, accounting, architecture, and engineering should clearly set out the structures and processes of governing councils and executive committees, and of complaints, discipline and registration committees, and should clearly indicate the routes of appeal from these bodies.
- 7.2 The procedures of professional self-regulatory bodies should be non-arbitrary, and there should be clear avenues of appeal from their decisions in individual cases:
- i) In cases involving the suspension or revocation of a licence, a formal hearing should be held, from which an appeal would lie to the courts, as is essentially the case at present. The statutorily constituted discipline committee would be the appropriate forum for such a hearing.

- ii) In cases involving the refusal of a licence (either to transfer or domestic applicants) there should be provisions for the refused applicant to request an informal hearing by the registration committee. The applicant should also have the right to demand a formal hearing by the registration committee, from which an appeal would lie to the courts. The registration committee should be empowered to make cost orders.
- iii) In cases involving allegations of professional misconduct or incompetence there ought to be provision for the complainant to request an informal hearing by the complaints committee. The complainant should also have the right to demand a formal hearing of the case by the discipline committee. The discipline committee should also be empowered to make cost orders, including orders against complainants.

7.3 The governing councils of the professional bodies should include representatives from a variety of interests both within and outside the profession:

- i) The Lieutenant Governor in Council should appoint representatives of the following categories of affected interests to the governing councils of professional regulatory bodies: employers and/or clients of professionals (including, in the case of accounting, *users* of financial information); third parties; paraprofessionals; and allied occupations.
- ii) The balanced representation of intra-professional interests ought to be left largely in the hands of professional bodies themselves. However, the electoral provisions of professional bodies ought to be subject to ministerial review and Lieutenant Governor in Council approval [see proposal 7.4(iii) below].

7.4 It should be made clear and explicit that the ultimate regulatory power in professional areas, as in other areas, lies with the elected legislature and executive:

- i) All regulations made by professional licensing or certifying bodies ought to be subject to the approval of the Lieutenant Governor in Council with prior review by the responsible minister; but ministerial or Cabinet power should not extend to the power to impose regulations on the professional bodies. Such “reserve” legislative authority ought to remain with the legislature. Furthermore, all regulations ought to be published in the *Ontario Gazette*.

- ii) The responsibility for the professions under review ought to lie with the Provincial Secretary for Justice.
- iii) A distinction should be made clearly in the enabling statutes between “regulations” and “bylaws”, the latter not being subject to review, approval, or Gazetting. Bylaws should deal only with “administrative” matters, and regulations with matters of “policy”.
- iv) The jurisdiction of the Ombudsman should be extended to include professional regulatory bodies.

7.5 Information regarding the decisions and activities of professional bodies and the reasoning behind these decisions should be publicly available: Accordingly, statutes establishing professional bodies ought to require submission of an annual report, of specified format, to the responsible minister and to a standing committee of legislature. These reports should contain both information descriptive of council and committee activities, and statistical data regarding membership profiles, attrition rates in training programmes, applications for entry, and other matters related to manpower planning, as well as disciplinary cases, and complaints.

7.6 There should be opportunities for informed public debate and discussion of professional policy by affected interests, and for bringing this debate to the attention of public authorities:

- i) A standing committee of the legislature, probably the Committee on the Administration of Justice, ought to receive and publicly review the annual reports of professional bodies, as noted in proposal 7.5 above.
- ii) A periodic comprehensive review of professional policy and legislation should be undertaken by a select committee of the legislature, possibly at decennial intervals.

Chapter 8 Citizenship and Transfer Rules

8.1 Canadian citizenship should *not* be a requirement for *membership* in any professional body.

8.2 Canadian citizenship *should* be required of all members of the governing councils of professional bodies.

- 8.3 Where work experience *in Ontario* is thought to be necessary, it should be undertaken by all applicants, transfer applicants and new Ontario applicants, in equal amounts irrespective of the work experience of transfer applicants undertaken in other jurisdictions.
- 8.4 In no case should post-licensure experience *per se* in the home jurisdiction be required of transfer applicants. Pre- and post-licensure work experience in other jurisdictions should be equally satisfactory in fulfilling Ontario requirements, where the Ontario context of practical experience is not essential.
- 8.5 Where work experience *per se* is required of all applicants for licensure, and the Ontario context of this experience is not deemed to be essential, the experience of transfer applicants in other jurisdictions should count towards fulfillment of this requirement.
- 8.6 Academic requirements for transfer applicants should be satisfied by:
 - i) training programmes in their home jurisdictions of similar quality and length to those required in Ontario;
 - ii) specially set Ontario examinations in specified areas where the applicant's training is deficient and/or where the content of the subject is particularly affected by the Ontario context.

Chapter 9 Specialization and Non-Price Advertising

- 9.1 There is no case for formal specialty certification/accreditation programmes in any of the four professions. The case is weakest in public accountancy and architecture because of the relatively constrained functions performed by professionals in these fields and the relatively sophisticated clienteles involved. Even in engineering and law, where there is much more scope for *de facto* specialization of functions, client information problems in effecting an appropriate matching of client and professional in the selection process do not seem so acute as to justify the costs in terms of market segmentation and administrative burdens that are entailed in a formal specialty certification programme.
- 9.2 Removal of existing restrictions in the four professions on non-price advertising, such as biographical and office information, major clients (by consent), and preferred areas of practice, whether in

the mass media, professional or trade journals, or professional brochures, would substantially meet the objects of specialty certification programmes without incurring the concomitant costs. The only constraint should be to ensure that such advertising is neither misleading nor deceptive.

Chapter 10 Fee Determination and Price Advertising

- 10.1 There is no case for a prohibition on price advertising in any of the professions. The prevailing prohibition in the legal profession has significantly contributed to consumer ignorance and confusion about legal fees and impaired the competitive health of some segments of the legal services market. The only constraint on price advertising in any of the professions should be that it not be misleading or deceptive.
- 10.2 There should be no promulgation of fee schedules of any kind in any of the professions under review.
- 10.3 Ethical rules should be adopted by the professions requiring disclosure of the basis of fee determination by a professional before accepting an engagement. Similarly, ethical rules should require a professional to notify a client of any special means of fee review available (e.g. Taxing Master, fees mediation) in the event of being unable to resolve a fees complaint to a client's satisfaction.
- 10.4 Legal service plans (e.g. legal insurance plans or prepaid group legal service plans) seem likely to develop on a significant scale in Ontario, and policies should be developed to promote and accommodate these plans. Further submissions to the Professional Organizations Committee on this subject would be helpful.
- 10.5 Contingent fee arrangements as a means of financing civil litigation have attractions in improving middle class access to the legal system. Again, further submissions on this subject would be helpful.

Chapter 11 Post-Entry Competence

- 11.1 Civil liability claims for professional negligence appear to be effective competence incentives in public accountancy, effective to a

qualified extent in architecture and engineering, and of limited effectiveness in law.

- 11.2 The desirability of mandatory errors and omissions insurance requirements as a condition of the right to practise, at least where the professions themselves have not so elected (that is to say, accounting, architecture and engineering), has not been clearly established. While such a requirement would improve a profession's access to information on problems of incompetence, other advantages to the public seem less clear and the ability of private insurance markets to service such a requirement on acceptable terms seems uncertain. Further submissions might usefully be addressed to the Professional Organizations Committee on this question.
- 11.3 Any group insurance plan, mandatory or voluntary, should carry substantial uninsurable deductibles and require an insurer to disclose to the professional body at regular intervals the full incidence and costs of claims.
- 11.4 The accounting and legal professions should follow the lead of the architecture and engineering professions in developing comprehensive loss control programmes with loss control bulletins, professional liability handbooks, claims incidence updates, loss prevention seminars (with attendance incentives through premium reductions), etc.
- 11.5 The disciplinary body of each profession should have access to all relevant claims data from group insurance plans including individual files.
- 11.6 The limitation period for civil liability suits for professional negligence should not begin to run until the injury has occurred (rather than when the cause of injury occurred), as recently proposed in the Ontario Attorney General's model *Limitations Act*.
- 11.7 The professional statutes under review should put beyond doubt that the professions are responsible for regulating post-entry competence, as well as misconduct.
- 11.8 To facilitate effective regulation of competence, a wide and flexible range of sanctions should be placed at the disposal of each

profession. These should include the power to suspend or revoke a licence, the power to limit a professional's practice, the power to require supervision or collaboration by or with other professionals, the power to order re-examination or compulsory continuing education programmes, and the power to fine.

- 11.9 A fees mediation service should be provided by each profession.
- 11.10 Each profession should be empowered to undertake a peer review programme.
- 11.11 Complainants aggrieved by the conduct of professionals and dissatisfied with the disposition of their complaint by the professional body, should be entitled to seek the informal intercession of the Ombudsman on their behalf [see proposal 7.4(iv)].
- 11.12 Mandatory universal requalification (re-examination) or continuing education requirements should be rejected.
- 11.13 Each profession should be subject to an annual reporting requirement involving the submission to a standing committee of the legislature of such information on the operations of its disciplinary processes as might be prescribed by legislation (see proposal 7.5).

Chapter 12 Firm Structure

- 12.1 Professional firms should be permitted to incorporate,
 - i) subject to the requirements that a majority of directors and shareholders be licensed members of the profession whose services the firm is purveying, be *bona fide* full-time employees of the firm, and that the remaining directors and shareholders also be *bona fide* full-time employees of the firm; these requirements would not apply to engineering firms;
 - ii) subject to an election by the firm between unlimited liability and limited liability with mandatory errors and omissions insurance coverage;
 - iii) subject to the professional corporation obtaining and maintaining a certificate of authorization from the professional licensing body.

- 12.2 The professions under study should develop intra- and inter-professional institutional arrangements for promoting and vetting multidisciplinary firm arrangements.
- 12.3 In developing appropriate rules on multidisciplinary firms, the professions should attach weight to the following principles:
 - i) Multidisciplinary collaborative enterprises between professionals and non-professionals involving the provision of professional services should be prohibited.
 - ii) Multidisciplinary professional firms, as firms, or dually qualified individuals, should be licensed by all relevant professional bodies.
 - iii) Individual professionals in such firms should be confined to functions for which they are individually licensed unless a duly licensed professional also formally assumes professional responsibility for work performed by a professional functioning outside the scope of his personal licence.
 - iv) Requirements as to beneficial ownership and composition of boards of directors proposed in the context of incorporation should also apply to multidisciplinary professional firms.
 - v) Multidisciplinary professional firms should be required to practise only through the corporate form.

Chapter 13 The Employed Professional

- 13.1 While the treatment of the interests of employed professionals within the governing bodies of the professions must remain essentially a matter for the profession itself to determine, professional bodies ought to be encouraged to:
 - i) frame electoral provisions to identify professionals employed in industry and government (and possibly those employed in professional firms as well) as distinct constituencies entitled to reasonably proportionate representation [see also proposal 7.3(ii)];
 - ii) frame conduct requirements and ethical codes to take account of the variety of employment contexts in which professionals find themselves.
- 13.2 The professional exclusions in *The Ontario Labour Relations Act* and *The Crown Employees Collective Bargaining Act* ought to be removed.

